

## Note to assist scoping of scrutiny project on planning enforcement

**Councillor Gordon Nardell**

**17 January 2009**

### Background

1. A breach of planning control occurs when someone:
  - carries out development that needs planning permission without first obtaining it, or
  - breaches the conditions attached to planning permission.
2. The Planning Acts give the Council a wide range of powers to deal with a breach of control.
3. Main instrument is an enforcement notice (EN) requiring a person to take steps to remedy the breach. Failure to comply is an offence. But an EN is usually issued only after a period of investigation. It can also be appealed to the Secretary of State, and an appeal delays the EN coming into effect. So there are also a number of pre-emptive powers, in particular:
  - Stop Notices (SN), which can be used to require activity covered by an EN to cease straight away. A SN can be served any time between the EN being issued and coming into effect – so can avoid the stalling effect of an appeal. But liability to pay compensation in some limited circumstances. Council must consider cost/benefit before serving SN.
  - Temporary Stop Notices (TSN), which can be used to stop any activity for a brief period (generally up to 28 days) even if no EN issued. Council must do “quick” cost/benefit check. Compensation in same circumstances as for SN.
  - Application to high court for an injunction. Usually done where case extremely urgent or where other measures have failed (eg. breach continues despite conviction for failing to comply with EN). Court has a discretion. Potentially an expensive process – but then so is defending an appeal against an EN.
4. Breaches of condition can also be dealt with by breach of condition notice (BCN). Failure to comply is an offence. Comes into force 28 days after service, but TSN can be used to bridge the gap.
5. There are additional special powers dealing with unauthorised work in relation to listed buildings.
6. Effective enforcement of planning control can have a huge role to play in protecting the quality of life and the local environment. But it is highly technical and depends on a team of skilled officers. It seems appears to be generally acknowledged that there is a historic shortage of suitably experienced officers in Southwark, which has left a gap in effective enforcement, the consequences of

which have been particularly visible in a number of areas including Peckham. As a result of inaction a number of harmful physical operations and changes of use have now become immune from enforcement (which happens after a period of 4 or 10 years depending on the type of breach of control).

7. Things have been improving recently. I gather some recruitment has taken place, and the workforce seems to be getting more effectively organised. A number of cases that had gathered dust have begun moving, in some cases as a result of member pressure. At the request of N&PRCC, Dennis Sangweme, Enforcement Manager, has been giving regular written and oral reports on enforcement – mainly in The Lane ward which includes much of Peckham Town Centre – to public Community Council meetings. These have been valuable to members and welcomed by the public. There are also embryonic steps in progress in the N&PRCC area to take a more joined-up approach to planning enforcement, involving other agencies (such as Community wardens) and the eyes and ears of planning enforcement staff. My guess is there may have been signs of improvement elsewhere in the Borough. So this is an opportune time for a scrutiny project, enabling the Sub-Committee to understand the lessons of the past, identify current problem areas, help senior officers shape improvements to the service, and make recommendations for the respective future roles of officers and members including Community Councils.

#### General issues

8. Quality and effectiveness of service:
  - a. prompt response once apparent breach discovered by officers/notified by members/public?
  - b. Criteria for identifying priorities and who decides? Officers/Exec member or other? Role of ward members/Community Councils in identifying local prevalence of particular kinds of enforcement problem (like fixing of SNT priorities ward panels, and interplay between Community Councils and Community Wardens management in fixing wardens' priorities)
  - c. Is appropriate use of pre-emptive powers: is an overcautious approach taken towards SNs and TSN's? Is an accurate risk assessment made of the prospects of compensation liability in these cases? Is sufficient attention paid to the possibility of injunctions (this authority makes relatively little use of planning injunctions).
  - d. Information –gathering from the public in relation to appeals where contest on facts, eg. how long an allegedly immune use has gone on?
  - e. Suitably flexible approach where breach unintentional and minimal policy/amenity harm?
  - f. Joined-up inter-agency approach to detecting breaches of planning control?
9. Delegations and member involvement:
  - a. Scheme of delegation – are decisions taken at appropriate officer level?

- b. member role and education/training of members
  - c. report-back practices – written/oral reports to CC? Regularity? Public or planning meetings?
10. Resourcing and organisation of the service:
- a. resourcing generally: senior officers' views on whether appropriate numbers of specialist officers at necessary levels of experience/seniority?
  - b. Permanent/temporary staff. Are there/have there been HR issues specific to planning enforcement?

#### Peckham as a case study

- particular problem of impact of unauthorised operations/changes of use because:
  - o harmful to amenity – eg shopfront alterations and fitting of roller shutters (affects Peckham High St/Queen's Road and Rye Lane – Peckham and The Lane wards)
  - o overall problem of “lawlessness” – residents troubled by “wild west” attitude to frequency and seeming impunity with which unauthorised changes made
- a number of difficult cases still gathering dust or not moving towards resolution. Review process to ensure doesn't happen? General attitude towards protracted negotiations?
- Lack of prompt pre-emptive action in some significant cases, eg. Holly Grove “Massive Fish and Meat Market”, citing potential compensation liability as basis for decision not to serve TSN.
- Cases where prompt action has been taken illustrate what can be done when Council uses powers at its disposal. Eg. unauthorised lorry route to 5A Bushey Hill Road site – BCN plus TSN over the waiting period. Applauded by residents (though some later hiccoughs over whether BCN subsequently breached).
- embryonic steps towards “joined up” enforcement in N&PR area